

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

ALEJANDRO ORTIZ

VS.

**CESAR MARTINEZ PEREZ,
JESUS ANTONIO BENITEZ d/b/a
TRANSPORTES BENITEZ SA. DE C.V.
AND JAMS LOGISTICS, LLC d/b/a
BENITEZ TRANSPORT**

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**CIVIL CASE NO. _____
JURY DEMAND**

APPLICATION AND NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Pursuant to 28 U. S. C. §1332(a)(2) and Rule 81 of the local rules for the Southern District of Texas, Defendants **CESAR MARTINEZ PEREZ AND TRANSPORTES BENITEZ, S.A. DE C.V.** (“Applicants”) file this Application and Notice of Removal and in support thereof would show the Court the following:

1. On May 11, 2020, Plaintiff, Alejandro Ortiz, filed his Plaintiff’s Original Petition in a cause of action against Defendants, **CESAR MARTINEZ PEREZ, TRANSPORTES BENITEZ, S.A. DE C.V.**, and **JAMS LOGISTICS LLC** in the 444th Judicial District Court of Cameron County, Texas, Cause No. 2020-DCL-02163.
2. On June 4, 2020 Defendant Jams Logistics, LLC filed its Original Answer.
3. On June 8, 2020, Defendant Cesar Martinez Perez and Defendant Transportes Benitez, S.A. de C.V filed their Original Answers to Plaintiff’s Original Petition.

4. On September 7, 2020 Defendant Jams Logistics, LLC filed a motion for summary judgment.

5. On September 22, 2020 Plaintiff Amended his Original Petition and added an additional Defendant, Sky Danielle Young, due to a subsequent accident Plaintiff had on June 13, 2020 with a vehicle driven by Sky Danielle Young. Subsequently, Applicants moved to sever Plaintiff's claims given that it involved two separate motor vehicle accidents occurring more than sixteen months apart.

6. Pursuant to 28 U.S.C. § 1446(b)(3) this notice of removal was filed within 30 days after Defendants **CESAR MARTINEZ PEREZ AND TRANSPORTES BENITEZ, S.A. DE C.V.**, were served on January 15, 2021 with "other papers," the Order Granting Defendants' Motion to Sever, when it was first ascertained that the case is one which is removable.

7. This case is one which is removable based upon diversity jurisdiction.

8. Plaintiff did not state his nationality in his original petition, and the case was not removable. Plaintiff later verified written interrogatories stating that he is not a Mexican citizen. Plaintiff answered request for admissions denying he is a Mexican citizen or permanent resident alien. Plaintiff served the subject discovery responses on July 24, 2020.

9. Plaintiff Alejandro Ortiz is a resident of Cameron County, Texas. Applicant Transportes Benitez, S.A. de C.V., is a company domiciled in Reynosa, Tamaulipas, Mexico. Applicant Cesar Martinez Perez is a citizen and a resident of Reynosa, Tamaulipas, Mexico. Jams Logistics, LLC is a company domiciled in Texas.

10. The action described in paragraph 1 arises from a motor vehicle incident that occurred in Cameron County, Texas on or about January 15, 2019. It is alleged that a tractor owned by Transportes Benitez, S.A. de C.V. and operated by Cesar Martinez Perez, an employee

of Transportes Benitez, S.A. de C.V. rear ended the Plaintiff. Defendants plead that the Court has subject matter jurisdiction over this action, because Plaintiff seeks damages in excess of this court's minimum jurisdictional limits and the lawsuit arises out of events or omissions that occurred in Cameron County. This case is being removed to the district and division from where the state court action was pending.

11. The amount in controversy exceeds \$75,001.00. In Plaintiff's Original Petition, Plaintiff seeks monetary relief over \$1,000,000.00.

12. Pursuant to Rule 81 of the Local Rules of the Southern District of Texas Applicant would show the following:

- a. Plaintiff: Alejandro Ortiz
- b. Defendants: Cesar Martinez Perez
Transportes Benitez, S.A. de C.V.
Jams Logistics, LLC ("Jams")

13. Status of service of process: All Defendants have made appearances in the case.

14. Plaintiff's inclusion of Jams Logistics, LLC constitutes a fraudulent joinder for purposes of defeating diversity jurisdiction. Jams Logistics, LLC is not a proper defendant in the lawsuit. Jams Logistics, LLC owned the trailer connected to the tractor involved in the accident. The trailer had nothing to do with the accident. Defendants incorporate herein Jams Logistics, LLC's motion for summary judgment in support of their position that Jams was included for fraudulent reasons.

15. Fraudulent joinder can be established in two ways: (1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court. *Travis v. Irby*, 326 F.3d 644, 647 (5th Cir. 2003) citing *Griggs v. State*

Farm Lloyds, 181 F.3d 694, 698 (5th Cir. 1999). Under the facts and claims plead, Plaintiff would never be able to recover from Defendant JAMS Logistics, LLC. As such, Plaintiff is unable to establish a cause of action against Jams in state court.

16. Counsel for each party is as follows:

Counsel for Plaintiff, Alejandro Ortiz:

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17. A jury was demanded by Defendants Cesar Martinez Perez and Transportes Benitez,

SA. De C.V., in the county court and the jury fee was paid.

18. Name and address of court from which the case is being removed:

444th Judicial District
Cameron County
974 E. Harrison
Brownsville, Texas 78520

19. Pursuant to Local Rule 81, a copy of all pleadings asserting causes of action and all answers to such pleadings, a copy of the docket sheet and an index of the matters being filed are attached hereto.

WHEREFORE PREMISES CONSIDERED, Applicants pray that the above action now pending in the 444th Judicial District Court of Cameron County, Texas, Cause No. 2020-DCL-02163, styled *Alejandro Ortiz vs. Cesar Martinez Perez and Transportes Benitez, S.A. de C.V.*, be removed to this Court pursuant to Rule 28 U.S.C. §1332 and Rule 81 of the Local Rules of the Southern District of Texas and that Applicants may have such other and further relief at law or in equity to which they may show themselves justly entitled.

Respectfully submitted,

By: 

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Attorney in Charge

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Attorneys for Defendants
Cesar Martinez Perez and
Transportes Benitez, SA de CV

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Application and Notice of Removal has been forwarded to counsel of record on this the 13th day of February 2021, as follows:

Via Email: mike@jvlawfirm.com
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Tantara Rodriguez